No. 08-392

IN THE

Supreme Court of the United States

INDYWAY INVESTMENT,
Petitioner,

vs.

DENNIS COOPER and
COUNTY OF LOS ANGELES,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEALS
SECOND APPELLATE DISTRICT, DIVISION THREE

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING

Respondents in this proceeding are Dennis Cooper, an individual and the County of Los Angeles. Neither party is a corporation.

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I.

INTRODUCTION

Petitioner Indyway Investment ("Indyway") asks this Court to grant review of the California Court of Appeal's unpublished opinion to resolve perceived conflicts between California *Revenue and Taxation Code sections 3711, 3691.1, and 4112(c)*[1] because Indyway claims that when these statutes are applied, they violate the Fifth and Fourteenth Amendments by taking property without due process of law. Petitioner's request mirrors their earlier Petition for Writ of Certiorari under a related case which was recently denied.[2]

Indyway contends that this case presents a conflict among code sections in the California Revenue and Taxation Code that controls the sale of tax defaulted real property in California in a way

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[1] All further statutory references are to the California Revenue and Taxation Code unless otherwise indicated.

[2] Refer to *Indyway v. Opri, et.al*, (2007) USSC 2007-1479-02, *cert. cenied*. This case involves the same Petitioner, the same federal due process violation issues by the County of Los Angeles and the same questions posited here for judicial review. Prior to losing the properties in the instant case, Indyway had lost two other properties for the same reasons as the instant case — failure to pay taxes. Indyway claimed due process violations through a malpractice action against their attorney after losing their lower court trial.

that merits review by this Court. Indyway is simply wrong in its contentions.

As it did in the trial court and the California Court of Appeal, Indyway once again attempts to rely on its distorted version of facts which are based on evidence found by both the trial court and the appellate court to be lacking in credibility, and in some instances completely fabricated, to advance its theories that are not supported by law or facts.

The plain truth of this matter is as follows:

- Indyway did not pay its lawfully assessed and levied real property taxes on multiple parcels of land in Los Angeles County for many years.

- Those parcels of land became tax-defaulted and, ultimately, became subject to the tax collector's power of sale pursuant to *section 3691, et. seq.*

- Notices of the tax-default, the power to sell and the impending auction sale of Indyway's properties were properly published, recorded and mailed in accordance with the applicable California Revenue and Taxation Code sections and constitutional due process requirements.

- Indyway had *actual notice* of the date, time, and location of the pending of the two tax defaulted parcels which are the subject of this action and had *actual* knowledge of the last day to redeem the parcels from default and the amount required to be paid to accomplish the

redemption.

- The two tax-defaulted parcels which are the subject of this action were lawfully sold to Respondent, Dennis Cooper, as the highest bidder, at the Los Angeles County's tax auction in 2003.

- The two tax-defaulted properties were never redeemed from defaulted status by Indyway, or any other party, prior to the sale of those parcels at auction sale in August 2003.

- The two tax-defaulted properties were never removed from the public auction process before the date of the date of the tax auction.

Notwithstanding all of the above, Indyway chose, once again, as it done for years, not to pay its taxes and, as a result, the properties were sold by the County to Respondent, Dennis Cooper, at the properly noticed public auction in an effort to satisfy the outstanding tax liability.

Indyway contends that the trial and appellate courts erred in their application of the law to the facts presented by it. Further, Indyway contends that sections in the California Revenue and Taxation Code which govern the imposition of the tax collector's power to sell tax defaulted property (*3691, et. seq.*), state that the issuance of a tax deed is conclusive evidence of the regularity of the proceedings leading up to its issuance (*3711*), and address the redemption of tax-defaulted property

(*4112*) are somehow conflicting and results in a violation of Indyway's constitutional rights of due process. Again, Indyway's arguments are based on its distorted and, in many instances, fabricated evidence and misapplication of the law.

The trial and appellate court's ruling are consistent with applicable case law and the legislative intent behind each cited Revenue and Taxation Code sections. Further, the trial and appellate court found no due process violations.

In Indyway's Court of Appeal Opening Brief, Indyway states that the tax deed should be cancelled for the following factual contentions:

1. Appellant did not have actual notice of the tax sale.

2. The Tax Collector did not send notice to Appellant "proper mailing address."

3. The Tax collector used an outside service to compile addresses for Appellant.

4. The Tax Collector changed the designations of the parcels from Public Auction to Agreed Sale.

5. The Tax Collector "removed" the parcels from the public auction only to return the parcels back on the same day.

6. The tax Collector fraudulently informed Appellant that the parcels were pulled from the sale.

7. The tax collector did not send tax bills to Appellant; and,

8. The tax Collector failed to file a new power to sell.

Indyway never raised conflicts of any of the three Revenue and Tax Code statutes as issues at trial. Similarly, Indyway never raised any statutory conflicts as issues in its Appellant's Opening brief ("AOB"). The appellate court addressed Indyway's contentions that the County violated its right to federal due process; however, in doing so, the court stated that Indyway's remaining factual contentions (outlined above) were barred. These contentions were found *not* cognizable by the appellate court and included the following arguments: 1) that the County failed to comply with statutory requirements for giving notice of the auction; 2) that the properties were improperly removed from the tax sale; 3) that the properties were improperly replaced in the tax sale, and 4) that the County was required to record a second notice of power to sell.

In addressing the federal due process argument, the appellate court relied on the notice required by *Jones v. Flowers* (2006) 547 U.S. 220, 223, 126 S. Ct. 1708, 164 L.Ed 2d 415 outlining the "government's required notice that is reasonably calculated under all of the circumstances to apprise of the pendency of the action and give an opportunity to object" (*supra*, at p. 226) coupled with the means of notice as set forth in *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 315, 70 S.Ct. 652, 94 L.Ed.

865. The appellate court concluded that the methods taken by the County in order to give notice to Indyway were not unreasonable as a matter of law. Thus, the due process standards were met.

Nonetheless, Indyway posits two issues grounded upon these three Revenue and Tax Code statutes for this Court's review. (Indyway's petition, p. i, Questions Presented.) Indyway's petition is patently defective for several reasons.

First and predominantly, this Court's review lies from the Court of Appeal's decision. *Supreme Court Rule 10(c)*. As the Court of Appeal has not issued a decision based on any conflict of the three statutes set forth in Indyway's petition, there is nothing for this Court to review about these statutes. It is axiomatic that "'[where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.'" *Pennsylvania Dept. of Corrections v. Yes/wy,* 524 U.S. 206, 212-213 (1998) (quoting *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 147, n. 2 (1970)).

Second, Indyway never identifies any ground for review under *Supreme Court Rule 10(c)*, e.g., a state court has decided an important federal question in a way that conflicts with a decision of another state court or a United States court of appeals, a state court has decided an important question of federal law that has not been but should be settled by this court, or a state court has decided an important federal question in a way that conflicts with a decision by this court. Here, the Court of Appeal

concluded the issue of whether the County's efforts satisfied the constitutional standard of reasonableness was academic. The conflict of the California statutes and Indyway's newly-asserted violation of constitutional due process allegation were never in issue since this case and Indyway's appeal arise out of factual disputes which were adjudicated at the trial court level in favor of the County of Los Angeles and Dennis Cooper, which Petitioner never challenged the constitutional validity of the statutes.

Irrespective of Indyway's faulty petition, these statutes are not in conflict and do not violate due process, as asserted by Indyway. As discussed below, they are clear and operate in harmony with each other and afford all necessary due process requirements. Considering the substantial evidence adduced in both Cooper's and the County of Los Angeles's favor at trial (A-19, A-20)[3], plus the trial court's express finding that Indyway's witnesses testified to a "different, and highly improbable, view of the facts" (A-14), review of Indyway's two issues would not be of any benefit to the public or to the body of case law. Review would not yield any significant pronouncements on these statutes.

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[3] References to the Appellate Court decision incorporated in Petitioner's petition as Appendix A are prefaced by "A-page number".

II.

STATEMENT OF THE CASE

Indyway is a trust established in 1992. It was created to evade taxes. (A-7) The trust document indicates that, by purchasing real property for 21 silver dollars of a specific purity, it creates a special status whereby the property is exempt from normal taxation such as property taxes. (*id.* at A-7) Five parcels of real property were transferred to Indyway in 1992. Indyway refused to pay on four of the five parcels. (A-8) The County recorded Notices of Power to Sell on four of the five properties on August 15, 1997. (A-8)

As a result of the Appellant's failure to pay the outstanding secured property taxes, and by operation of law, in 1997, the subject properties, and two additional adjacent tax defaulted properties (Parcels 13 and 14), became subject to the power to sell by the Tax Collector. (*Section 3691.1*) The Tax Collector attempted to sell all four of the Appellant's tax defaulted properties by scheduling them to be sold at the 1998A Tax Auction. (A-8) On essentially the eve of that auction, the Tax Collector received a commitment for a loan which indicated that the defaulted taxes would be paid from the proceeds of a loan which was pending. (A-9) Although all four properties were removed from the 1998 tax sale to facilitate the receipt of that payment, the taxes were not paid by the Appellant or by any other party. Each of the Appellant's tax defaulted properties remained subject to power to sell.

In 2000, the Tax Collector again attempted to sell all four of Appellant's tax defaulted parcels. However, the Tax Collector detected an error in the Notices of Auction for Parcels 15 and 16, so the Tax Collector elected to remove those from the sale in 2000. (A-9) However, there were no errors in the Notices of Auction for Parcels 13 and 14 and those parcels were sold at the Tax Collector's 2000B tax auction. (A-9)

As for the August 2003 sale of Parcels 15 and 16 (which are the subjects of the instant case), it has been clearly shown by testimony and documentary evidence that: 1) the statutorily required Notices of Impending Power to Sell were timely mailed to the assessee of record and properly published; 2) the statutorily required Notices of Auction were timely sent to all parties of interest and Appellant acknowledges having actually received the Notice of Auction with respect to Parcel 15; 3) the Notice of Auction was properly published in accordance with the statutory requirements, and; 4) the property was not redeemed by the end of business on the last day before the tax sale. (A-18)

The two properties (parcels 15 and 16) were offered for sale at the 2003B tax auction, and were sold to Cooper. Cooper paid for the properties, the proceeds of the sale were applied to the tax default of the properties and tax deeds were properly issued to Cooper. (A-14)

Indyway brought suit against the County of Los Angeles and Dennis Cooper to quiet title and for

declaratory relief.

Based on the above, the Trial Court made the following findings of fact:

a.) With respect to the County's attempt to sell parcels 15 and 16 in 1998 and 2000:

1) Both Parcel 15 and Parcel 16 became tax defaulted for non-payment of secured property taxes on July 1, 1992 (C-4)[4];

2) A Notice of Impending Default was published in the Los Angeles Daily Journal on May 20, May 27, and June 2, 1992 (C-4);

3) A Delinquent List of defaulted properties reflecting Parcels 15 and 16 was published in the Long Beach Press-Telegram on August 27 and September 3, 1993 (C-4);

4) A Courtesy Notice was sent to Appellant on Parcels 15 and 16 (C-4);

5) A Notice of Power to Sell Tax-Defaulted Property was recorded for Parcel 15 as Los Angeles Document No. 97-1265654 on August 15, 1997 (C-4);

6) A Notice of Power to Sell Tax-Defaulted

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[4] References to the Trial Court decision incorporated in Petitioner's petition as Appendix C are prefaced by "C-page number".

Property was recorded for Parcel 16 as Los Angeles Document No. 97-1265655 on August 15, 1997 (C-5);

7) Both parcels were scheduled to be sold at the County's 1998A Tax Sale (C-5);

8) Both parcels were included in the auction notification process for the 1998A Tax Sale (C-5);

9) The Tax Collector received a letter from Frank Gabriel of Hudson Mortgage Bankers which provided that the defaulted taxes would be paid from the proceeds of a loan that was being processed (C-5);

10) The defaulted taxes were not paid, and Parcels 15 and 16 were removed from the 1998A Tax Sale, but remained subject to power to sell (C-5);

11) Parcels 15 and 16 were next prepared for sale for defaulted taxes for the 2000B Tax Sale(C-5);

12) Both parcels were included in the auction notification process for the 2000B Tax Sale (C-5);

13) In preparing the files for the 2000B Tax Sale, the Tax Collector determined that the notification process for Parcels 15 and 16 was not complete (C-5);

14) Parcels 15 and 16 were not offered for sale in the 2000B Tax Sale (C-6); and

15) The defaulted taxes were not paid, and the parcels remained subject to power to sell(C-6).

Further, the Court found:

1) The Recorded Notice of Power to Sell Tax Defaulted Property stays in effect until the taxes are paid and the property is redeemed (*Revenue and Taxation Code Section 4112*) (C-6); and

2) Including Parcels 15 and 16 in the auction notification process for the 1998A and 2000B Tax Sales constitutes an attempt to sell Parcels 15 and 16 in 1998 and 2000, in fulfillment of the requirements of *Revenue and Taxation Code Section 3692*. (C-6, C-7)

b.) With respect to notices of auction sent to all parties of interest pursuant to Revenue and Taxation Code Section 3701, the Court made the following findings of fact:

1) Parcel 15 and Parcel 16 were transferred to Indyway Investment by Rudy A. and Melissa P. Diaz on May 8, 1992 (C-7);

2) The deed referencing such transfer was recorded as Los Angeles Document No. 92-844769 on May 11, 1992, and instructs that when recorded, the document should be mailed to: Indyway Investment c/o P.O. Box 832, N. Hollywood, California, D.D.M. 122.32 Zip Exempt (C-7);

3) The Notice of Auction needed to be mailed to parties of interest as defined in *Revenue and Taxation Code Section 4675* (C-7);

4) For the 2003B Tax Sale, the County ordered a Parties of Interest Report from M.F.I. Title Company for Parcels 15 and 16 to determine parties of interest to mail the Notice of Auction to (C-7, C-8);

5) A Parties of Interest Report is a report that shows which parties of interest should receive a Notice of Auction as defined in *Revenue and Taxation Code Section 4675* (RT-2162:20-24);

6) For the 2003B Tax Sale, the Notice of Auction for Parcel 15 and Parcel 16 was mailed to P.O. Box 832, North Hollywood, CA 91607 (C-8);

7) For the 2003B Tax Sale, the Notice of Auction for Parcel 15 was mailed to the situs address, 2034 West 15th Street, Long Beach, CA 90813-1004 (C-8);

8) For the 2003B Tax Sale, the Notice of Auction for Parcel 16 was mailed to the situs address, 2030 West 15th Street, Long Beach, CA 90813-1004 (C-8);

9) The Tax Collector established and followed a reasonable procedure to notify parties of interest (C-9);

10) Indyway Investment did not change its official mailing address with the County Assessor from P.O. Box 832, North Hollywood, CA 91607 to P.O. Box 6052, Long Beach, CA 90806 (C-9); and

11) The only addresses that the Tax Collector was required to send were to the official mailing address with the County Assessor (P.O. Box 832,

North Hollywood, CA 91607) and the situs address (C-9).

The Court further found that the Tax Collector fulfilled the requirements of *Revenue and Taxation Code Section 3701*, and was successful in that Appellant received actual notice of the 2003B Tax Sale (C-10).

c.) With respect to Indyway's receipt of notice of the 2003B tax sale for parcels 15 and 16, the Court based its decision on the following facts:

1) Kedar Cohen testified that he was Successor Trustee of the Indyway Trust (C-10);

2) Mr. Cohen testified that Indyway treated all parcels, including Parcels 13, 14, 15, and 16, as one parcel (C-10);

3) Mr. Cohen testified that he received the Notice of Auction from a tenant at 2725 Baltic Avenue, Long Beach (C-10);

4) In a letter dated July 8, 2003 from Mr. Cohen to Mark J. Saladino, Los Angeles County Treasurer and Tax Collector, Mr. Cohen states that he received the Notice of Auction for Parcel 15 and Mr. Cohen testified that his signature is on the letter (C-10, C-11);

5) Mr. Cohen testified that he prepared the letter and that it was sent by Frank Hernandez (C-

11);

6) In the letter, Mr. Cohen threatens to sue the County if it proceeds with the tax sale, and specifically references Parcel 15 and Parcel 16 (C-11).

The trial court further found that the County complied with the requirement to provide Indyway with notice of the tax sale for parcels 15 and 16 for the 2003B tax sale and specifically found that the Tax Collector was required to send a Notice of Auction to the last known mailing address of parties of interest pursuant to *Revenue and Taxation Code Section 3701* and did, and that Indyway acknowledged that it received actual notice of the Notice of Auction. (C-11, A-12). After eight years of non-payment of property taxes, the County notified Indyway, both in writing and orally, that the property would be sold at auction in June 2000. (A-8) Indyway acknowledged in writing that it received the County's notices. (A-12). Still, Indyway did not pay the taxes. Consequently, the property was sold at auction to Dennis Cooper on August 11, 2003 (A-14).

Significantly, Indyway did not raise the three statutes upon which it bases its petition as issues at trial. The trial court thereupon issued a statement of decision, making findings of fact, conclusions of law, and a decision — all in favor of Cooper and the County of Los Angeles. The trial court found that Indyway did not prove that it could have set aside the County's sale.

Indyway appealed. Indyway never raised any

conflicts within the three Revenue and Tax Code sections as issues in its AOB. As a result, the Court of Appeal — in its *unpublished opinion* — did not issue any ruling on conflicts among these statutes.

III.

REASONS FOR DENYING INDYWAY'S PETITION.

A. Indyway Never Raised the Conflicts Between the Three Statutes as Issues at Trial and the Court of Appeal's Opinion Does Not Adjudicate Any Issues about Conflicts of Those Statutes.

> "A petition for writ of certiorari will be granted only for compelling reasons." *Supreme Court Rule 10.*

This Court's review lies from the Court of Appeal's decision. *Supreme Court Rule 10(c).* As the Court of Appeal has not issued a decision based on any conflict of the three statutes set forth in Indyway's petition, there is nothing for this Court to review. It is axiomatic that "'[w]here issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.'" *Pennsylvania Dept. of Corrections,* 524 U.S. 206 at pp. 212-213 quoting *Adickes,* 398 U.S. at p. 147, n. 2.

B. As the Court of Appeal Never Decided a Federal Question Regarding Due Process As it Pertains to The Revenue and Tax Code Conflicts, There Is No Ground For Review.

Second, Indyway never identifies any ground for review under Supreme Court Rule 10(c), e.g., a state court has decided an important federal question in a way that conflicts with a decision of another state court or a United States court of appeals, a state court has decided an important question of federal law that has not been but should be settled by this court, or a state court has decided an important federal question in a way that conflicts with a decision by this court. Here, as the Court of Appeal's decision involved none of the above regarding a federal question, there is no ground for this Court's review. Consequently, review by this court is neither appropriate nor warranted.

Even if a California Court had addressed the merits of Indyway's new argument or if this Court were to do so, the three statutes operate harmoniously and provide all required due process protections. Thus, the three statutes do not violate the Fifth and Fourteenth Amendments.

C. The Unequivocal Language of Section 3691.1 Was Followed by the County's Recordation of Notice of Power to Sell Real Property; There Is No Conflict among Sections 3711 and 3691.1 and They Do Not Violate Due Process of Law.

Indyway's first issue claims that section 3691.1 is ambiguous as to whether it requires the County to record a notice of power to sell *each* time a property comes up for a tax sale and thus, section 3711 should not be permitted to find the sale valid if the County did not issue more than one notice of Power To Sell. Indyway's petition, p. 20. Indyway bases this claim on its assertion that the County "executive deleted" the original notice of Power to sell. Id at p. 23.

Preliminarily, Indyway never argued in the Court of Appeal that the County "executive deleted" the original notice of power to sell real property. Thus, there is no foundation for this argument.

Second, section 3691.1 states that "[t]he tax collector shall execute a notice whenever a parcel becomes subject to the power set forth in section 3691 on a form prescribed by the Controller. The county clerk shall take acknowledgment of the notice without charge." The County followed this clear language — it recorded a notice of power to sell the relevant property. Indyway's argument that the County should be required to record subsequent notices has no support in section the 3691.1. Further, Indyway's

argument does not make sense — the notice is on record; there is no reason or purpose to record subsequent notices.

Contrary to Indyway's erroneous contention, *section 3711* does not compete with *section 3691.1.* Section 3711 merely states that:

> "Except as against actual fraud, the deed duly acknowledged or proved is conclusive evidence of the regularity of all proceedings from the assessment of the assessor to the execution of the deed, both inclusive."

As these statutes facially demonstrate, there is nothing ambiguous about them. They are clear and straightforward. They do not conflict or compete with each other. They do not take property away from an owner without affording due process (notice of sale and an opportunity to be heard — by paying the delinquent taxes before the sale). Indyway had both actual notice (written and oral) of the auction and an opportunity to pay the delinquent taxes to avoid losing its property at auction; as a tax evader, it decided not to pay the taxes and subsequently, lost its property when it was sold to Cooper at the County's auction. Indyway has not presented any cogent argument as to how these statutes supposedly deprived them or deprive any California property owner of their due process rights.

D. The County Did Not Rescind the Original Notice of Power to Sell the Real Property and Indyway Did Not Redeem the Property; Thus, Destroying the Foundation of Indyway's Purported Second Issue.

Indyway's second issue centers on its claim that the County rescinded the original notice of power to sell the real property and that it redeemed the property pursuant to *section 4112* and thus, that the sale should not be valid under *section 3711.* (Indyway's petition, p. i.)

Section 3711 shows that the deed to Cooper "is, in the absence of actual fraud, conclusively presumed regular in all respects when the deed to the purchaser at the public auction has been issued." *Herrington v. Weigel,* 82 Cal.App.3d 676,683 (1978).

Section 4112 concerns fees for redeeming property "prior to the proposed sale" and that such redemption would nullify the notice of the sale.

The substantial evidence found by the trial court, and affirmed on appeal, thoroughly undermines Indyway's claim that the issuance of a Certificate of Redemption should have cancelled the sale. Substantial evidence showed that the post-auction Rescission did not invalidate the sale and simply meant the delinquent taxes were paid with auction proceeds. The Rescission cancelled the tax lien, but did not affect or cancel the sale.

Second, substantial evidence shows the Certificate of Redemption resulted from payment of the back taxes from the auction proceeds and did not mean Indyway redeemed the property. The trial court gave no deference that the delinquent taxes were paid by an anonymous third party as claimed by Indyway. Accordingly, the County testified that Indyway's argument that Indyway redeemed the property is without merit.

Third, substantial evidence shows that bona fide purchaser Cooper — who did not have any prior dealings with Indyway — did not purchase or redeem the property for Indyway.

Fourth, the Rescission was recorded after the August 11, 2003 auction. "The right of redemption terminates at the close of business on the last business day prior to the date of the sale." Section 3707. That is because the property owner must pay the delinquent taxes the business day before the auction to stop the auction. Thus, the post-August 11, 2003 recorded Rescission and Cancellation thereof could not possibly support Indyway's argument that it redeemed the property (which can only occur pre-auction) or that it was deprived of due process of law.

Thus, the substantial evidence showed that the County's post-auction Rescission did not affect the sale, much less nullify the original notice of power to sell recorded years earlier. There is no issue, ambiguity, or conflict among sections 3711 or 4112, much less when applied to the facts here. Again, Indyway has not presented any valid argument that

these statutes somehow, when applied, take away property without due process of law. The substantial evidence elicited at trial and as noted by the Court of Appeal conclusively established that Indyway had actual notice (written and oral) of the County's auction of the property and lost the property via the auction sale because Indyway failed and refused to pay property taxes.

E. The Trial and Appellate Court's Findings That the Subject Properties Were Never Removed From The Tax Auction Such That Any Due Process or Constitutional Notice Violation Was Created Were Proper.

In its Statement of Decisions, the trial court specifically found that the subject properties were never removed from the public auction process (C-11). That finding was based on testimony from County's employees Sharon Perkins and Martha Duran, as well as testimony from an expert witness, Steven Hourigan (C-12).

"Removal" of a property from the public auction process is a term of art, so to speak, and is governed by *Revenue and Taxation Code section 3698.8.* No evidence has ever been offered to support that the properties were removed from the sale. Further, the appellate court noted, at footnote 13 in its opinion, that the temporary designation of the properties for the possible consideration of their sale to a

governmental entity, which was for a period of less than three hours and internal to the tax collector's office and not in any way disclosed to the public, did not rise to the level of any type of a constitutional violation (A-23).

F. Indyway Cannot Allege Any Defects Which Are Not Cured by the Issuance of The Duly Acknowledged Tax Deed Pursuant to Revenue and Taxation Code Section 3711.

The issuance of a duly acknowledged tax deed is conclusive evidence of the regularity of the tax auction proceedings, absent evidence of fraud or lack of an indispensable constitutional step. (*Revenue and Taxation Code section 3711*; *Chesney v. Gresham* (1976) 64 Cal.App.3d 120, 127.) In other words, the tax deed cannot cure a defect jurisdictional in nature, but it can cure non-jurisdictional defects. (*Ibid.*)

Several cases have established what constitutes a jurisdictional defects. The most clear definition is contained in *Miller v. McKenna* (1944) 23 Cal.2d 774, 782, wherein, while addressing the effectiveness of the curative provisions resulting from the issuance of a tax deed, the court stated:

> "Among the jurisdictional requisites are (a) a duly constituted taxing authority; (b) property to be taxed within the territorial jurisdiction of the taxing body; (c) property or subject matter legally subject to the tax;

> and (d) sufficient notice and opportunity for hearing to constitute compliance with due process."[5]

Clearly, Indyway does not allege any defects that correspond to the first three jurisdictional requisites defined by the *Miller* court, above. Thus, in accordance with *Revenue and Taxation Code section 3711*, all defects alleged by Indyway are cured by the issuance of the tax deed, other than its one remaining alleged "jurisdictional" defect: that the County failed to provide it with adequate notice of the impending tax sale of the properties at issue, which allegations were disproved at trial.[6]

Although Indyway alleges lack of notice, the County contends that due process was fully satisfied by County's compliance with statutory and constitutional notice requirements. Such compliance is evidenced by Indyway's acknowledgment that it received notice of the tax sale. Thus, Indyway cannot

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[5] *[See, also, McMaster v. City of Santa Rosa* (1972) 27 Cal.App.3d 598, 603; *Security Investment Company of Riverside v. Douglas* (1946) 76 Cal.App.2d 592, 596.]

[6] Indyway makes repeated statements and allegations in its briefs that mirror the statements and arguments it made at trial, which the trial court determined were lacking in credibility. An appellate court does not reassess the credibility of witnesses or reweigh the evidence. (*In re S.C.* (2006) 138 Cal.App.4th 396, citing *People v. McCleod* (1997) 55 Cal.App.4th 1205, 1221.)

show any jurisdictional defects as to any aspect of the tax sale of properties. Based upon the evidence presented at trial and the arguments presented to the appellate court, both courts agreed with the County's contention.

"The fundamental requisite of due process of law is the opportunity to be heard." (*Mullane v. Central Hanover Bank and Trust Co.* (1950) 339 U.S. 306, 314.) If a person has actual knowledge of the pending matter, then there is no question that person had opportunity to be heard, to post objections, to pay its back taxes or to pursue any other legally available remedy.[7]

It is clear that Indyway was afforded its due process rights in this matter. Therefore, any allegations regarding notice does not rise to constitutional injury, thus the tax deed is evidence of

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[7] Indyway's allegations that the County made a change in the designation of intended sale of its properties from a public auction sale ("Chapter 7 sale") to a private agreement type of sale ("Chapter 8 sale") and that the change somehow harmed Indyway, is irrelevant. First, such a change in designation is not a jurisdictional defect. Second, the evidence demonstrated, and the trial court agreed, that the properties were never "removed" from the auction process. Lastly, Indyway has no support in the law for its argument that any alleged change to a Chapter 8 sale terminated all of County's notices because, even if moved, the properties remained under the County's power to sell. The designation only alters who may buy property, not whether it would be sold.

the regularity of all proceedings in regards to the sale of these two parcels.

G. There is No Conflict or Ambiguity in the Language of Revenue and Taxation Code Sections 3691 and 3691.1.

Indyway's contention that the County was required to issue and record a new notice of power to sell is simply not meritorious. As noted by the appellate court's opinion in footnote 14, the statues are self-explanatory. Revenue and Taxation Code section 3691.1 requires the issuance and recording of a notice when a property becomes subject to the tax collector's power of sale in accordance with Revenue and taxation Code section 3691. Section 3691 sets forth when a property becomes subject to the power of sale as result of the unpaid taxes. The property remains subject to the power of sale as result of the unpaid taxes. The property remains subject to the power of sale until it is redeemed or sold. Section 3691.1 does not require that a new notice of power to sell be issued or recorded whenever a parcel is to be *offered* for sale. The purpose of recording the notice of the tax collector's power to sell the property is to provide notice to the world that the statuary lien on the property for the unpaid taxes is ripe to be enforced through the sale of the property.

There is simply no requirement, that the notice of the power of sale needs to be issued or recorded more than once.

H. The Tax-Defaulted Status of the Subject Properties Was Cured By Cooper's Purchase, Not By Any Pre-Auction Redemption.

Simply put, there was ample evidence provided to the trial court that the subject parcels were not redeemed by Indyway or any other party prior to the tax auction sale in August 2003.[8] The outstanding, defaulted taxes were cured by the application of the sale proceeds provided by Cooper as a result of his auction purchase of the property.

Revenue and Taxation Code section 3698.5 sets forth the method for establishing the minimum bid of a parcel in a tax auction. That section requires that the minimum bid be set at an amount not less than total amount necessary to redeem the property, plus costs. Section 3698.5 specifically outlines the amounts to be included and references the costs set as forth in Section 4112. Clearly, the intent is to read these statues together in a manner that results in a County's recovery of all outstanding taxes, penalties

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[8] In fact, in its opinion, the appellate courts specifically noted that a certificate of redemption, such as the one referenced by Indyway, may be obtained by any party wishing to obtain proof of the payment of taxes on a parcel and does not indicate the identity of the taxpayer. The court also noted that the trial court testimony of Indyway's trustee, Keder Cohen, regarding the alleged pre-sale redemption of the property was a blatant fabrication on a material point.

and costs in connection with its efforts to collect delinquent taxes.

Indyway's contention that these statues are somehow in conflict is, once again, manufactured and based on a recitation of facts that only it considers true, together with a misapplication of a clear and unambiguous law.

V.

CONCLUSION.

As Indyway never raised conflicts among sections 3711, 3601.1 or 4112 in the courts below, there is nothing for this Court to review. Indyway has not offered a single, valid reason why review of the Court of Appeal's unpublished opinion should be granted. In any event, the statutes are unequivocally not in conflict with each other or other parts of the of the Revenue and Taxation Code governing property tax sales, and application of them does not violate the Fifth and Fourteenth Amendments. Indyway had actual notice of the County's auction of the property because Indyway failed to pay property taxes; nonetheless, Indyway still refused to pay the taxes to avoid losing the property at the County's auction. Therefore, Respondent, Dennis Cooper, respectfully requests that the petition for writ of certiorari be denied.

Respectively submitted,

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